IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1022 of 2000
with
CRIMINAL MISC. APPLICATION No 7127 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMKARAN MAHAPRASAD SHRIVASTAV
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1022 of 2000
MS SADHANA SAGAR for Petitioner No. 1
THROUGH JAIL for Petitioner No. 1
MR KC SHAH APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 24/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

The appellant-convict, original accused No.8, had moved this Court by filing application being Criminal Misc. Application No.7127 of 2003 for early hearing of his appeal by highlighting that he was convicted by the

learned Additional Sessions Judge, Valsad at Navsari for the offence under Sections 395 and 397 of the IPC, and ordered to suffer RI for 10 years and fine of Rs.25,000/-, in default SI for 2 years for the offence under Section 397 of the IPC and RI for 7 years and fine of Rs.5,000/-, in default SI for one year for the offence under Section 395 of the IPC while disposing of the sessions case being Sessions Case No. 160 of 1996, as per the judgment and order of conviction recorded on 5.10.2000 and in view of the order of conviction and sentence he is undergoing the sentence since last 7 years and 2 months in Vadodara District Jail. His appeal is pending and he belongs to village Utarva, Tal. Antra, Dist. Banda of Uttar Pradesh State having in his family old parents, two small brothers, one sister and his daughter aged nine years. The other co-accused was released on bail during the trial and in view of the conviction recorded, the co-accused is taken in custody. The request is accordingly made by the applicant-accused that the appeal filed by him be separated in view of the fact that he is in jail since last more than 7 years and his appeal be ordered to be expedited. It is further found from his application that from day one of his arrest i.e. since 1996 he has not enjoyed any type of leave and accordingly prayed for expediting the hearing of the appeal.

2. The application was forwarded by the jail authority with a statement of the applicant-convict by furnishing other particulars under his letter dated 2.9.1994 and the said application was placed for consideration on 19.9.2003 and it was also brought to our notice by the office while circulating the application that the appeal filed by the accused is already on board for final hearing. The details furnished by the jail authority shows that the co-accused Shivprasad @ Raghu Kamtaprasad, convict No.75825, had absconded when he was released on temporary bail since 24.7.2002. The said accused has also preferred appeal being Criminal Appeal No.1071 of 2000 and the absconded accused Shivprasad Raghu Kamtaprasad is appellant No.2 in the said appeal. Criminal Appeal No. 1071 of 2000 was admitted as per the order dated 17.1.2001 and the appeal was ordered to be expedited. However, the prayer for bail was rejected as not pressed.

3. In view of the application of the applicant-accused through jail wherein the accused is praying for early disposal of the appeal as well as for separation of the appeal with the appeal of the co-accused and as the appeal is already on board for

final hearing, we have heard Ms Sadhana Sagar, learned advocate who appeared for the appellant-accused. It is her submission that the appellant-accused is in jail for about 7 years and considering the remission earned by him, he earned the remission for a period of one year. According to her, she has also taken instructions from the appellant-accused that in view of the fact that the accused is in jail for more than 8 years and as he is from Uttar Pradesh and looking to the conviction recorded by the learned trial Judge based on appreciation of evidence, she is not pressing the appeal on merits and she urged that as she is not pressing the appeal on merits and the appeal is already on board for final hearing, the request made by the appellant-accused for separating his appeal with the other appeal filed by the co-accused be entertained and accordingly, with the consent of the learned APP, we attach the application filed by the applicant through jail being Criminal Misc. Application No.7127 of 2003 with the main appeal.

4. Ms Sadhana Sagar has taken us through the judgment under challenge and the order of sentence passed by the learned trial Judge. According to her, the incident in question had occurred on 20.6.1996 at 20.15 hours in the house of complainant Shri Mohanbhai PW 1. As per the charge framed by the learned trial Judge, the accused of Sessions Case No.160 of 1996 has committed offence under Sections 395 and 397 of the IPC and the offence under the Arms Act. The present appellant is original accused No.8 in the said sessions case. As the appellant is not pressing the appeal on merits, we are not expressing anything in respect of the prosecution case in view of the fact that the other co-accused had also filed appeal being Criminal Appeal No.1071 of 2000 which is pending for hearing and the appeal filed by the appellant being Criminal Appeal No.1022 of 2000 is accordingly ordered to be separated with the appeal filed by the co-accused being Criminal Appeal No.1071 of 2000.

5. The learned trial Judge has, after considering the evidence led before him and considering the defence of the accused, recorded a finding that the prosecution has proved the case beyond reasonable doubt and the learned trial Judge has convicted the accused for the offence under Sections 395 and 397 of the IPC. After hearing on the point of sentence, the learned trial Judge has convicted the accused and sentenced the appellant-accused for the offence under Section 395 of the IPC by imposing sentence of RI for 10 years and fine of Rs.25,000/-, in default SI for two years. So far as the offence punishable under Section 397 of the IPC, the

learned trial Judge has imposed sentence of RI for 7 years and fine of Rs.5000/-, in default SI for one year. However, the learned trial Judge has exonerated the accused from the offence punishable under Section 25(1)(a) of the Arms Act and the sentences imposed on the accused were ordered to run concurrently by granting set-off. As the appellant is not challenging the order of conviction, we are not deciding this appeal on merits and accordingly, according to us, it is not necessary for us to discuss the evidence led by the prosecution which has been appreciated by the trial Judge while accepting the prosecution case by convicting the accused. The learned trial Judge, as found from the order of sentence recorded by him, has observed in para 16 of the judgment that appellant-accused Ramkaran Mahaprasad Shrivastava, original accused No.8, is in jail from 3.8.1996. The appellant-accused was not enlarged on bail during trial. After the appeal filed by the accused challenging the order of conviction and sentence, the appellant-accused was not released on bail. So the fact remains that from the day one of his arrest i.e. 3.8.1996 till he was convicted by the learned trial Judge on 5.10.2000, he remained in jail as an undertrial prisoner and after the conviction recorded by the learned trial Judge, as the High Court has not released the appellant-accused on bail, he remained in jail till date. As per the statement furnished by the jail authority, which we have already referred to earlier, when the application being Criminal Misc. Application No. 7127 of 2003 for early hearing was filed and as per the fresh statement furnished by Mr KC Shah, learned APP from the jail authority, it is clear that the accused has earned the set-off for a period of 4 years, 1 month and 33 days and after the conviction of the accused, he served out the sentence of 2 years, 11 months and 18 days and as per the jail record, the appellant accused has earned remission for a period of 10 months and 5 days. He has not enjoyed any type of leave in view of the conviction of the accused under Sections 395 and 397 of the IPC. The conduct of the accused in jail is also found to be satisfactory and good.

6. Ms Sagar has also brought to our notice the earlier application filed by the appellant-accused through jail wherein the appellant-accused has prayed for temporary bail for a period of thirty days on the ground that the wife of the applicant had expired on 20.10.2002 in Uttar Pradesh and the said application of the accused was not entertained as the applicant-accused was from Uttar Pradesh State. It is the contention of Ms Sagar that if we read the FIR filed by Mohanlal PW 1 in respect

of the incident which had taken place on the night of 19.6.1996, even as per complainant-Mohanlal, four persons had entered the house of the complainant, even as per the prosecution case, when Vasantiben, the wife of complainant-Mohnalal had opened the back door of her house. Ms Sagar has submitted that in view of the fact that the accused is in jail almost about 8 years, and as the appellant-accused is from Uttar Pradesh who has lost his wife during the period when the accused was in jail and as indicated by the appellant in his application that the appellant has old parents and other family members including one minor daughter aged 9 years, the sentence imposed by the learned trial Judge for the offence under Section 395 of the IPC deserves to be modified. According to her, this is a case where the sentence undergone be imposed to the appellant-accused.

7. Mr KC Shah, learned APP has submitted that in view of the conviction of the accused by the learned trial Judge based on appreciating the evidence of the prosecution case and the learned trial Judge has accepted the prosecution case and once the appellant is not challenging the order of conviction on merits, the submission made by Ms Sagar for reduction of sentence with the sentence undergone by the accused, is not proper and according to him, considering the seriousness of the offence where three persons have sustained injuries which are proved through medical evidence, the sentence imposed by the learned trial Judge does not require any modification. However, according to Mr Shah, it is correct that the appellant-accused is in jail for a period of more than 8 years considering the remission earned by him, and further that the appellant has not enjoyed any type of leave and the appellant has lost his wife recently when the appellant-accused was undergoing sentence in jail.

8. In light of the submissions made before us, we are of the view that, considering the fact that the appellant-accused is in jail for more than a period of 8 years including the remission earned by him, and the accused is in jail since his arrest by the police, the sentence imposed by the learned trial Judge under Section 395 of the IPC deserves some modification. However, such modification is not to be considered that the same will be applicable in respect of the other co-accused whose appeal is pending. Accordingly, the order of sentence imposed by the learned trial Judge for the offence under Section 395 of the IPC is modified and the accused is ordered to suffer RI for nine years, instead of ten years, and the order of fine imposed by the learned trial

Judge is modified and the appellant-accused is to pay fine of Rs.15,000/-, instead of Rs.25,000/-, in default of payment of fine, the appellant-accused is ordered to suffer RI for one year, instead of SI for two years as imposed by the learned trial Judge.

So far as the sentence for the offence under Section 397 of the IPC is concerned, the sentence of 7 years awarded by the learned trial Judge is required to be confirmed as well as the fine imposed by the learned trial Judge also deserves to be confirmed. However, so far as the sentence imposed for default in payment of fine under Section 397 IPC is concerned, in our view, it deserves some modification and instead of the accused to undergo SI for one year, we of the view that the ends of justice will be met if the accused is ordered to suffer RI for six months. The order of exonerating the appellant-accused for the offence under Section 25(1)(a) of the Arms Act is confirmed.

9. With these modifications, the appeal is partly allowed and the order of conviction recorded by the learned trial Judge for the offence under Sections 395 and 397 of the IPC is hereby confirmed. The order of exoneration of the appellant-accused Ramkaran Mahaprasad Shrivastav, original accused No.8 in Sessions Case No.160 of 1996 for the offence under Section 21(1)(a) of the Arms Act is also confirmed. However, the sentence imposed for the offence under Section 395 of the IPC is modified and the appellant-accused is ordered to suffer RI for nine years and fine of Rs.15,000/-, in default, the appellant-accused is to undergo RI for one year. The sentence of RI for 7 years and fine of Rs.5,000/- imposed under Section 397 of the IPC is confirmed. However, the sentence imposed for default in payment of fine is modified and the accused is to undergo RI for six months instead of SI for one year. The appellant-accused is entitled for the set off for the period for which he remained in jail and the sentences imposed are ordered to run concurrently. The appeal is accordingly disposed of in the above term.

The Office is directed that the paper book consisting of oral as well as documentary evidence be attached with Criminal Appeal No. 1071 of 2000 as Criminal Appeal No.1022 of 2000 is ordered to be separated and the same is disposed of today.

[D.K.TRIVEDI, J.]

[M.S.SHAH, J.]

sundar/-